

**MINUTES  
of the  
THIRD MEETING  
of the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 22-23, 2013  
Room 322, State Capitol  
Santa Fe**

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on August 22, 2013 at 9:49 a.m. in Room 322 of the State Capitol.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Yvette Herrell  
Rep. Emily Kane (8/23)  
Sen. Linda M. Lopez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Sen. Sander Rue  
Rep. Mimi Stewart  
Sen. Lisa A. Torracco

**Absent**

Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. William "Bill" R. Rehm

**Advisory Members**

Rep. Phillip M. Archuleta  
Sen. Jacob R. Candelaria (8/22)  
Rep. Kelly K. Fajardo (8/22)  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Rep. Sheryl Williams Stapleton

Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Rep. Brian F. Egolf, Jr.  
Sen. William H. Payne  
Sen. Michael S. Sanchez

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Monica Ewing, Staff Attorney, LCS

Cassandra Jones, Researcher, LCS

Jennifer Dana, Legislative Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Thursday, August 22****Welcome and Introductions**

Members of the committee and staff introduced themselves.

**Need for Increase in Funding for the DNA Identification System and Update**

John F. Krebsbach, administrator of the New Mexico DNA Identification System Administrative Center (DNA Center), told the committee that the Metropolitan Detention Center collects 50 percent of all of the DNA samples that go into the DNA identification database. Mr. Krebsbach told the committee that once samples are received, they are double-checked for mistakes. The sample is processed and then an outside vendor is contracted to analyze the specimen. Research has shown that it is less expensive to contract than to do the analyses in-house. When the data are analyzed, the data are returned to the DNA Center and a technical review is conducted. Eighty-five percent of offenders that match up to a case are New Mexico offenders in New Mexico cases. Sample collection has resulted in solving numerous crimes, and wrongfully arrested individuals have also been vindicated. Mr. Krebsbach emphasized the importance of matching the right people to the right cases. He told the committee that continued funding of the DNA Identification System is vital to the safety and well-being of New Mexico residents.

Mr. Krebsbach shared some statistics regarding DNA samples with the committee. He told the committee that the DNA Center barely has the budget to keep receiving samples, let alone to conduct analyses and perform its other functions. In the past, the DNA Center has been funded by a variety of funding sources. Changes in the federal grant program have resulted in a loss of approximately 80 percent in grant money. Last year, the DNA Center received a federal grant of approximately \$50,000. Mr. Krebsbach told the committee that the DNA Center wants to continue with its core mission to maintain the database and will eliminate analyses if it becomes necessary. The DNA Center will maintain its staff of three employees and maintain equipment in order to make matches for new cases and to be able to collect samples. The DNA Center will use federal money to ensure it has enough kits to collect samples and have those samples in place in order to analyze them when the money becomes available.

Mr. Krebsbach told the committee that a new contract is going into place for analyses that should have a 21 percent decrease for the cost of analyses. The DNA Center also made a small change to DNA collection kits in order to appease the United States Postal Service so the cost of postage for kits will go down by 31 percent. On December 18, 2012, the State Board of Finance authorized an extension grant of just over \$130,000 for continued analyses of DNA samples through April 30, 2013. Under that grant, 25 burglaries, eight sex offenses, five auto thefts and a number of other crimes were matched to DNA samples.

Mr. Krebsbach told the committee that with proper funding, the turnaround time from collection to entry into the database is 22 calendar days. When a match is made and the DNA Center needs to do a confirmation, which includes an additional full analyses, the turnaround time is 17 calendar days. The federal guidelines allow 30 business days for this type of activity.

Mr. Krebsbach reiterated the importance of federal grants and DNA fees to fund the statutorily required collection of samples. Because of the loss of federal grants, the DNA Center is in need of additional support.

Mr. Krebsbach told the committee that an anticipated shortfall in July of approximately \$150,000 has been reduced by approximately 29 percent due to the aforementioned contractual changes. The executive branch has indicated that the DNA Center should be able to seek funding to prevent shortfalls through the end of the year.

Members of the committee discussed Katie's Law and the effect its implementation has had on the DNA Center, the importance of DNA collection, vendors used to complete DNA sample analyses, the feasibility of doing analyses in-state and how DNA collection affects various governmental entities. The committee also discussed fees for DNA collection, the prevention of crimes and the processing of DNA kits.

### **New Mexico Sentencing Commission (NMSC) Prison Population Forecast**

Tony Ortiz, executive director, NMSC, told the committee that the female population of the Corrections Department (NMCD) has been climbing and is forecasted to continue to do so. Mr. Ortiz told the committee that the federal prison population has increased and the state prison population has decreased.

Mr. Ortiz told the committee that females constitute 6.7 percent of the national prison population but about 10 percent of New Mexico's prison population. Mr. Ortiz told the committee that because the female prison population is so small, it is more difficult to forecast correctly. He said that the NMSC meets with the NMCD quarterly to create the annual prison population forecast. The NMSC has had the opportunity to talk to the NMCD about population trends and to get information about policies and procedures that might have an impact on prison population in the future, such as length of stay, particularly for female inmates, and the number of women serving some portion of their parole in prison. Mr. Ortiz told the committee that the projected high count of the male prison population is 6,297 for fiscal year (FY) 2014 and 6,369

for FY 2015. The projected high count for the female population is 666 for FY 2014 and 681 for FY 2015. The current operational capacity at the New Mexico Women's Correctional Facility in Grants is 606. Mr. Ortiz told the committee that the number of women in prison for drug trafficking in FY 2007 was 31. In FY 2012, there were 44 women in prison for the same offense. In FY 2009, there were 41 women in prison for drug possession, and in FY 2012, that number dropped to 38.

### **Budgetary Needs of the NMSC**

Mr. Ortiz told the committee that the NMSC has a role to play in the implementation of the Results First initiative on which the committee had been briefed at an earlier meeting. The NMSC has decided that its FY 2015 budget proposal should request an additional \$50,000 due to the increased work of the NMSC connected with its involvement with the Results First initiative. The NMSC is responsible for working with and collaborating with the Legislative Finance Committee (LFC) and the Pew-MacArthur Foundation. The NMSC is also responsible for the ongoing collection and maintenance of data that will be essential to the Results First data model. The NMSC has suggested that there be a stakeholders group that includes members of executive agencies whose programs will be affected by these analyses. If that happens, the NMSC will have a role to play. Mr. Ortiz told the committee that the LFC has made it clear that the Results First initiative will become widely used in New Mexico. The program will begin expanding beyond criminal and juvenile justice and will help legislators make informed decisions about cost-effective programs.

Members of the committee discussed the Results First initiative and the role of the NMSC. Mr. Ortiz emphasized that the NMSC works with all branches of government to provide as much data as possible. The committee also discussed the potential creation of a stakeholder group to participate in the implementation of the Results First initiative across various policy areas. Linda Freeman, deputy director of the NMSC, told the committee that while the NMSC advocates for a stakeholder group, the initiative is being implemented by the LFC, and any such groups would need to be established by that committee. Ms. Freeman told the committee that the requested appropriation will be used to build the infrastructure that the NMSC needs to assist the Results First initiative as it moves forward. Members of the committee asked questions about funding for the implementation of the Results First initiative. Dr. Jon Courtney of the LFC told the committee that the LFC has been working on implementation for about two years. Dr. Courtney also told the committee that the LFC is working with various agencies and that the NMSC's help has been invaluable.

### **Approval of Minutes**

Members of the committee voted unanimously to approve the minutes of the committee's July 2013 meeting.

### **Update from the NMCD**

Gregg Marcantel, secretary of corrections, told the committee that the NMCD has made several policy changes targeted at reducing recidivism. He emphasized how important it is to

control the prison population. He told the committee that reducing recidivism will require investing in long-term commitments, and he emphasized the importance of having programs that are anchored in a well-conducted risk and needs assessment.

Joe W. Booker, deputy secretary of operations, NMCD, told the committee that the NMCD had implemented various policy changes, including changes to classification and lump-sum awards. Secretary Marcantel discussed recidivism reduction initiatives, including the implementation of programs such as yoga, greenhouse programs, automotive and welding programs and culinary arts programs at NMCD institutions.

Regarding solitary confinement, Mr. Booker told the committee that 16 percent of the NMCD inmate population resides in solitary confinement. He said that long-term isolation can create or exacerbate serious mental health problems and can have other negative consequences. The Vera Institute has visited four NMCD facilities to provide recommendations for segregation, disciplinary sentences and other changes to solitary confinement.

Mr. Booker told the committee that changes to the level system in corrections facilities have increased flexibility in order to increase gender-specific programming for female inmates in the Grants facility.

Jerry Ruark, director of adult prisons for the NMCD, told the committee that inmates that identify as gang members but are not part of an active prison gang are isolated and given more access to programming in order to rehabilitate them. Mr. Ruark explained how inmates are assessed for risk. Secretary Marcantel went into detail about a few of the programs offered to inmates, including the Joni and Friends program, the greenhouse program and the Healing Hearts Dog Rescue program.

CCJ members discussed fees for prisoners, financial liability for inmates trying to reintegrate themselves into society, the ability of ex-inmates to receive state-issued identification cards, services provided to help prisoners when they are released, prisoner enrollment in Medicaid and other issues important to the successful reintegration of prisoners into their communities. They discussed the vetoed SB 65 (2013) regarding the quality of life for prisoners and inmate programming. They asked questions about and discussed legal mail, the introduction of contraband, substance abuse treatment for inmates, health care for inmates, prison gangs and property taxes for private prisons. A committee member requested that the NMCD provide information to the CCJ regarding the breakdown of recidivism rates in private and public prisons; information about what the NMCD is doing to stop overcrowding in county jails, especially with regard to probation and parole violators; and an ethnic breakdown of each facility, including a breakdown by zip code.

### **Concerns Regarding Female Inmates in New Mexico**

Bette Fleishman, executive director, New Mexico Women's Justice Project, told the committee that the Women's Justice Project grew out of Peanut Butter & Jelly Family Services

(PB&J) and has done a lot of work over the years. Ms. Fleishman said that she has three issues of great concern regarding female inmates. Ms. Fleishman told the committee that female inmates have the fastest growing inmate population in New Mexico and expressed concern about women that are housed in the men's prisons because of overcrowding at the women's facility in Grants. Ms. Fleishman also expressed concerns about gender-specific programs. She told the committee that the NMCD should teach women marketable skills. Ms. Fleishman said that there had been rumors that women were being denied trailer visits with their children but that the NMCD has since assured her that this is untrue.

Susannah Burke, executive director, PB&J, referred the committee to an NMSC report dated March 2012 and titled "3-year Recidivism Rate for Clients of PB&J Family Services". Ms. Burke told the committee that the NMSC made recommendations throughout this study that PB&J has worked to implement. Nationally, the recidivism rate is 52 percent, and in New Mexico, it is 47 percent. The PB&J client recidivism rate is 28 percent, and without including probation and parole violations, it is 6.3 percent. Ms. Burke emphasized the importance of having programming specific to parents. She told the committee that many programs would not have been developed had the NMCD not worked with PB&J. PB&J and the NMCD work together in the prevention of the abuse and neglect of children. Ms. Burke said that the NMCD has the opportunity to influence the lives of many children. She said that when children participate in trailer visits, PB&J drives the children to the prison and back to their homes, which gives them an opportunity to talk about the visit. Ms. Burke told the committee that PB&J implemented case management and a weekly support group for families in the community. She emphasized the importance of gender-informed, trauma-informed and specific work because those services are tailored to individuals. Ms. Burke told the committee that there is anecdotal evidence of PB&J's effectiveness, and she shared some stories with the committee that illustrate the potential of inmates and how some programs could help inmates achieve that potential. Ms. Burke told the committee that PB&J is moving toward achieving evidence-based status.

CCJ members discussed probation and parole violations for women, substance abuse treatment facilities for women and programs for women. They requested that the NMSC provide a breakdown of crimes by gender and the average length of sentences for men and women. Mr. Ortiz told the committee that he could provide that information. He also told the committee that the percentage of sentences that men and women serve is almost identical. Members of the committee discussed vocational and educational opportunities for inmates, female recidivism and the cost of programming for female inmates. Members of the committee requested that they be provided with standard conditions of probation and parole.

### **Examination of Issues Surrounding Probation and Parole; Parole and Sex Offenders; Discussion of the Federal Elimination of Parole**

David Pederson, general counsel, Office of the Attorney General (OAG), told the committee that the Adult Parole Board has been conducting sex offender parole hearings for some time. The OAG has the obligation to prosecute hearings in front of the parole board. Sandy Dietz, chair, Adult Parole Board, told the CCJ that a new law in 2007 began impacting the

Adult Parole Board in 2012. She told the committee that when a sex offender who has been before the parole board goes back to prison for a violation, there is nothing in statute that requires the parole board to see the offender again. Ms. Dietz told the committee that she believes this is an oversight and that she would like to see provisions regarding this codified in statute. She referred the committee to HB 270 (2013), which addresses some of her concerns. The Adult Parole Board has the informal policy of holding hearings in these unique cases, but there is concern that when members of the board change, the policy may not continue.

Sherry Stephens, director of the Adult Parole Board, told the CCJ that there have been 16 hearings so far and that two of those hearings have resulted in the offender being discharged from parole. Members of the committee discussed and asked questions about the cost of hearings and risk assessments, proposed legislation to correct this issue, how risk assessments should be conducted, funding for the Adult Parole Board and expert witnesses at Adult Parole Board hearings.

### **Public Comment**

Reverend Holly Beaumont with Interfaith Worker Justice of New Mexico invited committee members to attend meetings regarding the Wage Theft Prevention Act. She told the committee that meetings would be held Wednesday, October 9, from 11:00 a.m. to 1:00 p.m. at St. John's Cathedral in Albuquerque. Kriselda Yazzie from the New Mexico Coalition to End Homelessness stressed the importance of the Wage Theft Prevention Act and again invited committee members to attend a meeting regarding the important issues. Reverend Beaumont told the committee that she would mail invitations to each committee member.

### **Recess**

The committee recessed at 5:32 p.m.

### **Friday, August 23**

### **Prioritizing Corrections Resources, Including Discussion of HB 465 (2013) on Decrease of Marijuana Penalties**

(Due to scheduling conflicts, this presentation was split into two parts.)

Jerry Madden, senior fellow, Right on Crime, told the committee that he is a former member of the Texas State Legislature, where he served as the chair of the Corrections Committee. He discussed the importance of saving money in prisons. He discussed policies in Texas regarding drug users in prison as well as inmates with mental health issues. He emphasized that a corrections department in any state should attempt to correct inmates. Mr. Madden told the committee that in most states, prisoners come from parole revocation, probation violations or sentences from a judge. He told the committee that if resources are provided in the community, it might be possible to stop some of the probation and parole violations that are filling prisons. He told the committee that as chair of the Corrections Committee, he was told that Texas would need more than 17,000 new prison beds. He discussed the importance of using

data in order to make informed decisions. He told the committee that Texas decided to avoid building new prisons by altering other policies. Instead of spending \$530 million on new prisons, Texas spent \$240 million in other programs and policies to reduce the prison population. Mr. Madden told the committee that states and policy groups all over the nation have begun to look at Texas as a model for changes and are beginning to make a difference in the criminal justice field. Texas has closed three prisons in the last two years, as well as eight juvenile facilities. The corrections budget in Texas has not increased, but the number of people on probation has dropped, as has the number of parole revocations. Juvenile probation has dropped by more than 30,000 juveniles. Mr. Madden referred the committee to the Right on Crime Statement of Principles. Mr. Madden emphasized the importance of: 1) having good data; 2) having a clear mission; and 3) having a good coalition. He told the committee that making positive changes to the criminal justice system to make the state safer and save money at the same time will make a big difference for the state.

Paul J. Gessing, president, Rio Grande Foundation, told the committee that the foundation deals with fiscal issues relating to the budget. He told the committee that criminal justice affects New Mexico in three ways: direct spending, foregone revenues and lost economic growth. Mr. Gessing told the committee that there are many implications from incarcerating individuals. New Mexico has not traditionally followed a strict criminal prescription, and incarceration rates are lower in New Mexico than in other states. He told the committee that New Mexico has high rates of homicides and violent crime combined with low rates of incarceration. According to Federal Bureau of Investigation 2011 reports, New Mexico has relatively high rates of property crime. Mr. Gessing told the committee that New Mexico's crime rate can potentially drive away valuable residents. He told the committee that New Mexico could potentially redeploy resources in a way that is more effective. He emphasized keeping violent criminals behind bars, rehabilitating those that can be rehabilitated and helping those that are in need of services rather than incarcerating them.

Mr. Gessing outlined ways in which the state could control costs and protect public safety, including:

- drug courts, which offer judicial oversight of offenders with mandatory drug testing and escalating sanctions for failure to comply. Mr. Gessing told the committee that a California study in 2006 found that drug courts cost less than \$3,000 per participant. New Mexico has 35 drug courts that have processed 9,500 offenders since 1994, and the recidivism rate of New Mexico drug courts is 11.9 percent;
- diversion of prison probationers and parolees who are revoked for technical violations. Mr. Gessing told the committee that in 2008, there were 413 revocations to prison for violations. He told the committee that if New Mexico used a graduated sanctions matrix that relied on intermediate sanctions and diverted just half of the offenders, it could save \$6.4 million;
- the Law Enforcement Assisted Diversion (LEAD) program or pre-booking diversion, which identifies low-level drug offenders for whom probable cause exists for an arrest and redirects them from jail and prosecution by providing linkages to treatment and



- social support;
- treatment, which the Arizona Supreme Court found effective in 77 percent of cases. The National Drug Abuse Treatment Outcome Survey of 10,000 participants found that residential treatment resulted in a 50 percent reduction in drug use and a 61 percent reduction in crime;
- the release of geriatric inmates, something that is done in 36 other states. Mr. Gessing told the committee that the release of 17 infirm inmates each year could result in a savings of more than \$840,000;
- more halfway houses, which would provide an alternative for inmates who have been paroled but cannot be released because they lack housing; and
- other reforms that would provide long-term benefits to assist ex-offenders to reintegrate into society. Mr. Gessing discussed barriers to employment for ex-offenders and the difficulty some ex-offenders have obtaining identification cards.

CCJ members discussed revisions to the Criminal Code, how the Right on Crime idea has been implemented in various states, criminal justice policy and crime data.

Senator Torracco made a motion that the CCJ request the permission of the New Mexico Legislative Council (LC) to create a subcommittee to look at changes to the Criminal Code. The motion was seconded by Representative Powdrell-Culbert and passed with no opposition.

Representative Stewart made a motion that the CCJ send the request to the leadership of both parties in each chamber of the legislature by letter, as the next LC meeting is not until October. The motion was seconded by Representative Herrell and passed with no opposition.

Members of the committee asked questions about and discussed geriatric release, drug addiction in New Mexico and treatment options, probation and parole violators, the cost of criminal justice systems in New Mexico and the expansion of various corrections programs that already exist in New Mexico.

### **LEAD Program — Santa Fe**

Emily Kaltenbach, state director of the Drug Policy Alliance, told the committee that through LEAD, low-level drug offenders can get treatment and social support in order to bypass the criminal justice system. She told the committee that treating the underlying public health issues has many public safety benefits. She discussed the importance of effective treatment. Ms. Kaltenbach told the committee that the LEAD pilot program in Santa Fe is committed to intensive case management. Treatment for those participating in the program can be inpatient or outpatient and is tailored to that specific individual. Benefits of the LEAD model include cost savings, reduced overdoses and economic improvement. The Adult Probation and Parole Division of the NMCD has been working with the LEAD task force to identify potential participants. Sergeant Jerome Sanchez from the Santa Fe Police Department discussed the correlation between drug use and property crimes. He shared anecdotal evidence of LEAD's effectiveness. Joohee Rand, director of strategic initiatives for the Santa Fe Community

Foundation, told the committee that 100 individuals were identified for opiate-related arrests by Santa Fe law enforcement officers over the past three years. More than one-half of those individuals arrested for opiate possession or sales had a history of property crime arrests or were soon arrested for one. She told the committee that 91 out of 100 individuals arrested for opiate possession in 2010-2012 were repeat offenders with a pattern of being re-arrested every six months on average. This target population of 100 individuals cost more than \$4.2 million over three years. This cost does not include the loss of productivity and earnings, the impact on families, the cost of drug treatments and services provided, the increased public safety issues, the opportunity costs of time and resources and the time spent by some individuals, such as witnesses and jury members, involved in the judicial process. The estimated cost per individual in the LEAD program is about \$34,000, \$4,000 less per individual than the current system.

Ben Bauer, acting chief public defender, expressed support for the LEAD program. He discussed the impact of drug crimes on the community and told the committee that LEAD is an investment that research shows will pay off. He told the committee that the LEAD program needs a cushion of political support.

Angela R. "Spence" Pacheco, district attorney for the First Judicial District, told the committee that the system as it stands now is ineffective. She described a cycle by which an addict is arrested, prosecuted and put on probation. She told the committee that addicts then violate their parole and the whole cycle starts again. She stressed the importance of treating addicts in order to prevent drug use and related crimes. Ms. Pacheco stressed the importance of supporting treatment options for addicts.

Members of the committee discussed and asked questions about the amount of time district attorneys spend on these crimes, opportunity costs, caseloads for district attorneys and the potential of statewide LEAD programs.

### **Prioritizing Corrections Resources, Including Discussion of HB 465 (2013) on Decrease of Marijuana Penalties (continued)**

Ms. Kaltenbach told the committee that drug policy reform has been happening in various ways around the nation. She discussed some recent news regarding drug policy reform from other states and at the national and international levels. She discussed bipartisan efforts that are being made around drug policy reform in Congress. Ms. Kaltenbach told the committee that ballot initiatives passed almost a year ago in Washington and Colorado to decriminalize marijuana. She told the committee that Representative Kane introduced HB 465 during the 2013 session and that similar legislation has been seen in other states, such as Hawaii and New Hampshire.

Representative Kane told the committee that it is important to focus on good data when discussing any kind of reduced penalties. Members of the committee discussed and asked questions about marijuana with reduced THC levels for medicinal purposes, regulations on

medical marijuana, advocates for people who use medical marijuana and decriminalization efforts in other states.

**Adjournment**

There being no further business, the third meeting of the CCJ for the 2013 interim adjourned at 1:06 p.m.